WITNESS PROTECTION REGIME IN INDIAN CRIMINAL JUSTICE SYSTEM – A HUMAN RIGHT'S PERSPECTIVE

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RESEARCH PLAN (Ph.D. LAW)

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INTRODUCTION

India is a country where all citizens are considered equal in the eyes of law.[1] Every individual whether rich or poor, male or female, literate or illiterate etc. is given equal rights. The person who is rich and influential should not be given extra privilege or be given any chance to take law in their hands. Justice should reach to each and every citizen of our society and the trial of a case should be fair. The Hon'ble Supreme Court[2] has also held that the Constitutional mandate[3] required that the procedure of trial should be "fair, just and reasonable." The trial procedure should be fair and just for everyone person concerned with the case and it should not result against the interests of any person.

A criminal case is build upon the edifice of evidence whether it is direct evidence or circumstantial evidence that is admissible in law. For that witnesses are required. "Witnesses" play a very important role in the criminal justice system and the trial of a case. The witness is an indispensable aid in the justice dispensation system in any civilised society. It plays an important role in the justice dispensation system and in most of the cases acts as prosecution witness to prove the guilt of the accused.

The statement given by the witnesses helps the court to a great extent to frame the facts and circumstances of the case. It is for this reason that they are expected to tell the truth. It is said that witness are weighed, they are not numbered. Their relevance can only be ascertained by the statements given by them and also the evidence produced by them though not in quantity but in quality. If a fact is fully proved by two witnesses, it is as good as if proved by a hundred.[4]

There is reasonable apprehension in the mind of the public at large that the trial is neither free not fair with the prosecutor appointed by the State government conducting the trial in a manner where frequently the prosecution witnesses turn hostile especially during cross examination.

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[1] Article 14, Constitution of India
[2] *Maneka Gandhi vs. Union of India*, 1978(1) SCC 240
[3] Article 21, Constitution of India
[4] Menkin,H.L, "*Dictionary of Quotations on Historical Principles from Ancient and Modern Sources*", Collins, London and Glasgow, 1982 Edition, Page 1311

Today the Indian criminal justice system is facing problems of low conviction rate. In India, witnesses are harassed a lot. The witness is bribed, threatened, abducted, maimed or even done away with.[5]

Witnesses are treated badly in courts and have to face hardships when they come before the courts to give their statements. They are not provided even the basic facilities and they just keep roaming around in the courts for their chance to come and depose before the courts. They are threatened by the high profile accused persons who commit crimes and just wish to get away from everything by use of their power and money. The witnesses are often threatened by the high profile lot and these results in 'hostility' of the witnesses.

A witness is termed to be hostile when he changes or manipulates his earlier statements made by himself and depose changed statements before the courts due to various reasons beyond their control and acts as an hindrance in the criminal justice delivery system.

Conviction of a guilty person develops devotion and sincerity among the public. And this development leads to good governance. But nowadays in most criminal cases, witnesses turn hostile. Hostility of witnesses is a menace to the society. Witnesses who support the prosecution story during a criminal investigation do not like to turn up before a criminal court to dispose the true story. Even if they appear in the court they do not intent to put up the true picture of the prosecution due to fear, relations and closeness.[6]

It has been observed that if the witness himself is incapacitated from acting as eyes and ears of justice, the trial gets putrefied and paralyzed. It can no longer constitute to be a fair trial. There is frequent turning of witnesses as hostile, either due to threats, coercion, lures and monetary consideration at the instance of those in power, their corrupt practices ingeniously adopted to smother and stifle truth and realities coming out to surface rendering truth and justice to become ultimate casualties.[7]

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[5] *Swaran Singh v. State of Punjab*, AIR (2000) 5 SCC 68

[6] Bose, Suprio "*Hostile Witness A Critical Analysis of Key Aspects Hitherto Ignored In Indian Law*" <www.legalserviceindia.com/articles/host.htm> (last visited on 02/03/2019)

[7] (2004) 4 SCC 158, Para 41

The Supreme Court has rightly held that if in a case where the prosecution witnesses are called to depose before the courts to prove the guilt of the accused, and in that process he is made incapable or stopped from giving the true statement before the court, then what is the purpose of trial. It only leads to mockery of justice and the guilty remains unpunished. If the high profile or influential people are only the judges of the fate of the cases and they try to manipulate the same, then what is the use of a criminal trial?

The judges should not just sit back and remain a mute spectator to the illegal practices of the influential people.

Our country have witnesses many glaring examples of cases where witnesses have turned hostile in high profile cases and the accused have been let free on bail, whereas on the contrary the poor or the less influential people have been lying in jails for the same offences as committed by the latter.

Where there's money, there are hostile witnesses. As it is evident from many famous cases like ***BMW case***[8]***, Salman Khan case***[9]***, Jessica Lal Case***[10] the accused manipulated the evidences and bought the witnesses by giving them money and influenced them resulting in the witnesses turning hostile.

On January 10, 1999, a BMW driven by Sanjeev Nanda, grandson of the former Chief of Naval Staff and arms dealer Admiral S L Nanda, ran over sleeping pavement-dwellers in Delhi. His friends Manik Kapoor and Siddharth Gupta, sons of wealthy businessmen, were with him. Three people died on the spot while two received serious injuries. Sanjeev ran away and rammed over three policemen, killing them too on the spot. When he was brought to the police station, Sanjeev was still drunk. He was caught only because an oil leak from the spot had led the police to Siddharth's house where the car had been washed by Siddharth's father and his employees. The pillar of Delhi's elite society had destroyed evidence of homicide.

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[8] *Sanjeev Nanda vs. State*, 1999 II AD (Delhi) 857
[9] *State of Maharashtra vs. Salman Salim Khan & Anr*, (2004) 1 SCC 525
[10] *State vs Sidhartha Vashisht And Ors*, 2001 Cri.L.J. 2404

Also in the case of the famous Bollywood actor Salman Khan, he also managed to get away easily after knocking down a person on the footpaths of Bombay as the witnesses have turned hostile. He drove his car under the influence of alcohol, in a rash manner and caused the death of one person and caused grievous injuries to four others who happened to be sleeping on the footpath.

The Hon'ble Supreme Court in ***Best Bakery Case***[11] came down heavily on the State administration in general and the investigating agency in particular for rashly and negligently handling their duties and abdicating their responsibilities. The categorical finding is that the whole machinery of a State failed in maintaining the confidence of public in the justice delivery system. Apex Court in strong words reminded the trial Courts to be alive to the reality about the witness hostility. One of the predominant points taken note of by the Hon'ble Supreme Court is the lack of witness protection in our country.

The Hon'ble Supreme Court have given various statements regarding the increase in acquittals in heinous crimes where the accused have been released on bail due to absence of evidence against them and witnesses turning hostile.

It has for the first time acknowledged[12] the role of money and muscle power in the subversion of the course of justice and directs the police to provide protection in such cases.

The brow-beating of witnesses to make them hostile when it comes to deposing against influential accused made a Bench comprising Justices Arijit Pasayat and M K Sharma say: "It needs no emphasis that in a case of gruesome murder, police protection should be given to witnesses so that they can depose freely."

This only confirmed the recent fears expressed by another Bench comprising Justices B N Agrawal, G S Singhvi and Altamas Kabir about the possible breakdown of the criminal justice system because of the manner in which witnesses are bought over or silenced by the accused who are rich and powerful.[13]

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[11] Zahira Habibulla Sheikh and Another Vs. State of Gujarat and Others;(2004) 4 SCC158
[12] Mahapatra, Dhananjay *"Wtness protection must in gruesome murders"*, The Times Of India, March 10, 2009,
[13] *Ibid*

The Judiciary is also of the opinion that the accused person with money and power can trample any witness who dares to depose against them. The courts cannot do anything about it but to pass such laws which stops such abuse of the process of law and gives protection to the witnesses so that they could depose freely before the courts.

If there is such a position where the courts have themselves become incapable of tackling such problems, it has to be of grave nature. In such cases the judiciary should step forward and stop such injustice to happen and provide justice and fair play in the procedure of criminal trials. It should direct the legislature to draft such provisions regarding the problem which need to be tackled very soon otherwise the law would eventually be controlled by high profile strata of the society.

Thus the Researcher feels that the law regarding witness protection needs a consideration. The present existing framework is incapable of protecting the witnesses in courts and outside courts. The trial procedure has been taken for granted by a bunch of people of the society and taken law in their hands. This has compelled the researcher to undertake a research on this situation and he wishes to find out the probable solutions to the problem to curb this menace.

LITRATURE REVIEW

Books referred:

1. **Basu, N.D., "Code of Criminal Procedure", Ashoka Law House, New Delhi, Volume 1, 9th Edition, 2001, ISBN- 818-59-0278-X**

From this book the researcher has come to know the various sections under Code of Criminal Procedure that deal with witnesses and their protection like, the aim of ***Section 162*** *is to protect accused persons from being prejudiced by statements made to police officers who may coerce the witnesses to give wrong statements.*

Section 164 *which deal with recording of statements by the magistrates and other provisions of the Evidence Act dealing with evidentiary value and the way in which it is admissible in the courts.*

2. **Ranchhoddas, Ratanlal and Thakore, Dhirajlal "The Law of Evidence", Wadhwa and Company Nagpur, 21st ed. 2004, ISBN- 818-03-859-33**

From this book the researcher has referred sections relevant for the topic like, S.151 and S.152 of Indian Evidence Act, 1872 which protects witnesses from being asked indecent, scandalous, offensive questions, and questions which intend to annoy or insult them.

Articles referred:

1. **Mallimath, Justice, "Committee on Reforms of Criminal justice System", Justice Mallimath Report, Volume I, March 2003**

From this article the researcher has come to know that it includes controversial recommendations such as making confessions to a senior police officer admissible as evidence, and diluting the standard of proof required for a criminal conviction.
It also contains valuable suggestions to revamp the administration of criminal law, covering the entire gamut of the justice system from investigation to sentencing, from matters of policy to the nuances of criminal procedure and the law of evidence.

2. **Government of India, 198th Report of the Law Commission of India (2004)**

From this article the researcher has come to know that witness performs an important public duty of assisting the court in deciding on the guilt or otherwise of the accused in the case. He submits himself to cross -examination and cannot refuse to answer questions on the ground the answer will incriminate him.
The Mallimath Committee has expressed its opinion about witnesses by saying, "The witness should be treated with great respects and should be considered as a guest of honor."

3. **Law Commission of India "Protection and Facilities to witnesses", 154th Report, Vol.1, Chapter X, 1996, p.43**

From this article the researcher has come to know that the Law Commission of India in its 154th report, observed that the allowances paid to witnesses for appearing in Court are inadequate and called for prompt payment, no matter whether they are examined or not. This kind of payment is called "Diet Money" and is recognized under Section 312 of Cr.P.C. Such payments should always be given to the witnesses coming to courts to give their statements.

STATEMENT OF PROBLEM

The Researcher has chosen this topic while keeping in view various instances and judgments which reflect upon the present Criminal Justice system which has become inefficient. The most overwhelming reason of this weakness is the retraction of statements by the prosecution witnesses made earlier before police and thereafter turning hostile. Witnesses are turning hostile in cases involving heinous crimes or high profile personalities due to external pressures and threats, thereby leading to failure of criminal justice system The Jessica Lal and Best Bakery judgments are examples of cases which came as an eye-opener showing glaring defects in the judicial system.

In order to understand the process by which a witness becomes "hostile", we should consider the criminal procedure[14] which deals with police powers to investigate gives power to police have been given power to record statement[15] of witnesses. However these statements are not admissible[16] in court.

The aim of **S.162** is to protect accused persons from being prejudiced by statements made to police officers who may coerce the witnesses to give wrong statements.

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[14] Chapter XII, Code of Criminal Procedure, 1973
[15] S.163(3), Code of Criminal Procedure, 1973
[16] S.162(1), Code of Criminal Procedure, 1973

Therefore, the witnesses have to restate the statements in the court which he made to the police. Now in court, the nature of witness is judged. If he changes his statement before the magistrate from the statement which he has given to the police, he may have turned hostile.

So witnesses have been turning hostile with predictable regularity in many cases where earlier they have given statements before the police officials and later on they have changed their statements when time comes to depose before the courts and have turned hostile leading to weakening the case of the prosecution as against the accused.

There are various reasons why a witness may turn hostile. The People's Union for Civil Liberties (PUCL) made a press release on 2nd July 2003 pertaining to the Best Bakery case which said there are two ways to explain why the witnesses turns hostile.

The First is that the Police had recorded the statements incorrectly. The Second and more plausible was that the police had recorded statements correctly but those were retracted by the witnesses because of "intimidation and other methods of manipulation"

Another major reason of this growing menace is 'protracted trials' which denotes slow judicial process. It leads to frustration of witnesses and he tries to get rid of the harassment and turns hostile.

The Present Research work is undertaken keeping in view the need for an amendment in criminal law which would deal with the "Protection of Witnesses" since there is no law regarding the same barring few provisions of **S.151** and **S.152** of Indian Evidence Act, 1872 (which protects witnesses from being asked indecent, scandalous, offensive questions, and questions which intend to annoy or insult them)

It is all the more important that the rich people, politicians, bureaucrats and other influential people try to take the criminal system for granted and abuse the process of law by interfering in the criminal procedure of collecting evidence. The present provisions of law are being misused[17] by the influential for their own benefits

[17] *State vs Sidhartha Vashisht And Ors*, 2001 CriLJ 2404 is a clear example of the ways in which the influential politicians of our country by various means have caused over 32 witnesses to turn hostile.

It is high time that India should introduce a "Witness Protection Regime" for which the Law Commission also expressed the need for the same in its 198th Law Commission Report of 2004. Such program would provide adequate protection to witnesses and prevents them from turning hostile by providing them security against threats and intimidation by the accused and prevent damage to their life or property or to their family members.

HYPOTHESIS

The researcher by means of this research wants to put to test the hereinafter enumerated proposition:

"THE PRESENT WITNESS PROTECTION REGIME IN INDIA IS INADEQUATE TO PROTECT THE PROSECUTION WITNESSES"

There is an urgent need to have a comprehensive legislative scheme by the Parliament for protection of witnesses in the criminal justice administration system. The Present witness protection system does not provide proper care to the witnesses as they have such fear psychosis in their minds that the accused would harm them if he gives statements proving the guilt of the accused.

SCOPE OF STUDY

The Present Research work will deal with the present situation of hostility and the reasons which leads to the same and the existing legislative framework. Finally the researcher would deal with various judgments of the courts and give the answer to the abovementioned hypothesis so that the influential people or the law itself should not be prejudicial to the rights of any person and adequate protection should be given to the witnesses deposing in courts.

Keeping in view the lack of time and the scope of the present research work, the researcher would limit the topic to the provisions of the Criminal Procedure Code, 1973 vide Section 164

which deals with recording of statements by the magistrates and other provisions of the Evidence Act dealing with evidentiary value and the way in which it is admissible in the courts.

Various judgments of Apex court and different High courts and also the recommendation of the Law Commission Reports would be looked into in order to reach to an appropriate conclusion of the above mentioned hypothesis.

The provisions under the erstwhile TADA, 1987[18] and POTA, 2002[19] will also be considered by the researcher where provisions for witness anonymity and protection have been laid down in crimes relating to terrorists and the witnesses who give statements were protected by the above mentioned statutes.

Research would also include the suggestions for effective implementation of such witness protection regime in rightful manner and not prejudicial to rights of any member of society.

OBJECTIVES OF STUDY

The present research work has been taken over by the Researcher in order to find out the answer of the above mentioned hypothesis. It would be apt to crystallize the objectives of the present study as follows:

1) Why there is a need for insertion of a well defined law relating to Witness Protection in our Criminal Justice system?

2) Whether concept of anonymity of witnesses should be implemented in India as is prevalent in other countries?

3) Whether in-camera proceedings should be incorporated for all types of heinous crimes for prosecution witness, as are present in proceedings of Rape u/s 376, IPC as well as proceedings under erstwhile TADA, 1987[20] and POTA, 2002[21]?

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[18] Section 16, The Terrorist and Disruptive Activities (Prevention) Act,1987
[19] Section 30, The Protection of Terrorism Act, 2002
[20] The Terrorist and Disruptive Activities (Prevention) Act,1987
[21] The Protection of Terrorism Act, 2002

4) What other measures should be undertaken in our system to provide such protection to the witnesses?

5) How far will the abovementioned regime be effective in eliminating such menace from our society?

SOURCES.

SECONDARY SOURCES: Mainly secondary sources will be used in the present research which includes various commentaries, digests, and books, various articles written by different jurist, professors and eminent persons. Judicial Pronouncement of various Indian courts as well as abroad and provisions of Constitution will be made use of.

PRIMARY SOURCES will be considered as and when required.

CHAPTERIZATION

S.NO. CHAPTERS

1. CHAPTER – 1

INTRODUCTION

This chapter would deal with the conditions prevalent and the present scenario of legal protection given to a witness in criminal cases and deal with the various problems faced by the judges while giving judgments where the witnesses have turned hostile.

2. CHAPTER-2

CONCEPT AND ROLE OF WITNESS ALONG WITH HUMAN RIGHT'S PERSPECTIVE

In this chapter the meaning and importance of the witness would be dealt and the role played by the witness in a criminal trial and their basic rights.

3. CHAPTER-3

EXISTING LEGISLATIVE FRAMEWORK FOR WITNESS PROTECTION

This chapter would give an idea about the present existing legislative provisions present with regard to the subject and also deal with some special enactments been laid down by our legislature provisions of the ICCPR with regard to the topic.

4. CHAPTER-4

NEED FOR WITNESS PROTECTION

This chapter will give a detailed study for the need for giving adequate protection to the witnesses and at what stages and time the witness needs to be protected.

5. CHAPTER – 5

ROLE OF JUDICIARY IN WITNESS PROTECTION

In this chapter emphasis would be on various decisions of the Court, which clearly depicts the need for such protection and the various judicial recommendations and the intentions of various judges to deal with the present problem.

6. CHAPTER – 6

WITNESS PROTECTION IN OTHER COUNTRIES ALONG WITH NEIGHBOURING COUNTRIES

In this chapter the main focus would be on comparison of laws in different countries including Japan, Russia, UK, USA, Canada, South Africa, New Zealand, China, Pakistan, Nepal, Srilanka, Bhutan, and Bangladesh.

7. CHAPTER – 7

CONCLUSION AND SUGGESTIONS

In the background of the aforesaid discussion in different chapters the researcher would, in the end, appropriately answer the hypothesis of the present research work along with some suggestions for the same for effective implementation of witness protection programs in our country

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